IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL REVISION APPLICATION No. 321 of 2004

Dilip Bajrang Kale ..Petitioner.
Orig.Complainant.

Vs.

Suryakant Dadasaheb Bitale & Anr. ..Respondents.
Orig.Accused No.1.

Mr K.B.Sonwalkar, Advocate for the Petitioner.

Mr Imtiyaz A.I. Patel, Advocate for the Respondent No.1.

Ms S.D. Shinde, A.P.P. for the Respondent No.2.

CORAM: V. C. DAGA,J.
DATED: 18.10.2007.

ORDER:

1. This revision is directed against the judgment and order dated 29.5.2004 passed by learned Sessions Judge, Satara in Sessions Case No. 4 of 2004 acquitting the accused for the offences punishable under Sections 498-A and 302 of the Indian Penal Code.

FACTUAL MATRIX:-

2. Factual matrix reveal that the deceased Archana had married with the respondent no.1 on 6.6.2003 at village Kalewadi, tq. Khadav,

District Satara. "Satyanarayan Puja" was performed on 8.6.2003. As per family traditions, Archana returned to her father's house on 9.6.2003 and, thereafter, she went back to her matrimonial home on 11.6.2003. The deceased Archana again on 6.3.2003 had gone to her parent's house at village Kalewadi and, thereafter, again returned to her matrimonial home on 26.3.2003.

3. On 14.7.2003 the deceased Archana sustained 95% burn injuries at her matrimonial house. Her husband, respondent no.1-accused alone was present in the house at the relevant time. On the same day, she was admitted in Civil Hospital, Satara, where the Special Executive Magistrate had recorded her dying declaration (first dying declaration for short).

4. The message of the burn injuries suffered by Archana was received by her maternal uncle on 15.7.2003. He, along with his wife, went to see Archana and found that she was under medical treatment in Civil Hospital at Satara.

5. Special Executive Magistrate on 16.7.2003 recorded another dying declaration of Archana at Civil Hospital, Satara (Second Dying Declaration for short)

6. The petitioner (father of the deceased) thereafter on 16.7.2003 lodged F.I.R. with the Pusegaon Police Station, District Satara against the respondent no.1 alleging that the accused-respondent no.1 had given mental and physical harassment to the deceased Archana, since dowry demand was not fulfilled and that, ultimately, deceased Archana was made to suffer burn injuries.

7. On 17.7.2003 inquest panchnama on the body of the deceased was carried at Civil Hospital, Satara and the dead body was sent for post-mortem. The post-mortem report suggested death caused due to 90% superficial and deep burn injuries.

8. Investigating Officer on 17.7.2003 arrested the respondent no.1-accused in the aforesaid offence punishable under Sections 498-A and 307 of the Indian Penal Code. He, during the course of investigation, recorded

additional statements of the petitioner i.e. father of the deceased and registered offence punishable under Sections 302 and 498-A of the I.P.C. on 18.7.2003.

9. The Investigating Officer after completing investigation of the alleged offence submitted charge sheet in the Court of Judicial Magistrate, Vaduj, District Satara on 12.1.2004. The Judicial Magistrate, Vaduj committed the case to the Sessions Court at Satara who was pleased to register it as Sessions Case No. 4 of 2004 on 19.1.2004.

10. The learned Sessions Judge tried the accused for the offences punishable under Sections 302 and 498-A of the I.P.C. and after recording the evidence and appreciating submissions was pleased to acquit the accused of the offences alleged against him.

11. Being aggrieved by the aforesaid order of acquittal dated 29.5.2004 passed by the learned Sessions Judge, the petitioner/father of the deceased, has invoked revisional jurisdiction of this Court to challenge the legality and validity of the impugned order

acquitting the respondent no.1 of the charges framed against him.

SUBMISSIONS:-
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12. Learned counsel for the petitioner submits that the learned Sessions Judge over looked the fact that within a period of one and half month from the date of marriage, deceased Archana died due to 95% burn injuries in the presence of the accused-respondent no.1 and that he has not considered the effect of Section 113-A of the Evidence Act which compels the Court to presume, having regard to all circumstances of the case, that such suicide is abetted by her husband or by such relative of her husband.

13. The learned counsel for the applicant, in alternate, submits that the first dying declaration dated 14.7.2003 about accidental death was given by the deceased under pressure in presence of her husband. He further submits that the second dying declaration clearly stated that the accused no.1 wanted to have sexual intercourse on the fateful day for

second time, which the deceased had refused; due to which accused-the respondent no.1 got annoyed and poured kerosene on her body and set her on fire due to which she sustained 95% burn injuries. He submits that it was obligatory on the part of learned Sessions Judge to appreciate both dying declarations so as to find out which version of the dying declaration was genuine. He further submits that in order to decide this aspect, the corroborative evidence and circumstances available on record ought to have been taken into account which according to him have been completely overlooked by the Sessions Judge.

14. Learned counsel for the applicant went a step ahead and submitted that when a vital part of evidence is ignored or has not been considered or omitted from consideration and glaring defect is pointed out then the revisional Court at the instance of the private party can interfere with the order of acquittal. Reliance is placed on the Apex Court judgment in the case of **K.Chinnaswamy Reddy Vs.State of Andhra Pradesh and another A.I.R. 1962, S.C. 1788.**

15. Per contra, learned counsel appearing for the accused-the respondent no.1 submits that the court has appreciated entire material available on record, after appreciating the evidence on record, recorded acquittal. In this view of the matter, he submits that this is not fit a case; wherein, the revisional Court should interfere with the order of acquittal. He further submits that the reappreciation of evidence cannot be done in the revisional jurisdiction by this Court. In his submission, if two views are possible and one view is taken, then the revisional Court is expected not to interfere with the order of acquittal.

CONSIDERATION:-
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16. Having heard rival parties, short question that falls for consideration is: whether or not the relevant piece of evidence has been ignored by the learned Sessions Judge appreciating evidence warranting interference in the revisional jurisdiction.

17. Before considering the rival submissions the settled legal position needs short

reference.

18. In **K. Chinnaswamy Vs. State of A.P (supra),the Apex Court** held as under:-

> "Where the appeal Court wrongly ruled out evidence which was admissible, the High Court would be justified in interfering with the order of acquittal in revision, so that the evidence may be re-apprised after taking into account the evidence which was wrongly ruled out as inadmissible. But the High Court should confine itself only to the admissibility of the evidence and should not go further and appraise the evidence also."

19. In the case of **Akalu Ahir & Others Vs. Ramdeo Ram, A.I.R. 1973 S.C. 2145, Apex** Court ruled that where the material evidence has been over looked by the trial or Sessions Court, the High Court in revisional jurisdiction can interfere with the finding of acquittal.

20. It is true that appreciation of evidence is not within the jurisdiction of Revisional Court. If one sustainable view is taken by the Court while acquitting the accused, it is not open to the revisional court to substitute its view and interfere with the findings

given. However, if the Revisional Court finds that the material evidence has been completely ignored by the Sessions Court then certainly the revisional Court can look into the matter and interfere with the findings of acquittal.

21. Having examined the jurisdiction of this Court to interfere with the finding of acquittal, now let me turn to the law regarding the dying declaration and the value which is to be attached to it has been examined in considerable detail in **(State of Karnataka vs. Shariff) 2003(2) S.C.C.473.**

18. "The earliest case in which the law on the point of dying declaration was considered in detail by this Court is Khushal Rao v. State of Bombay A.I.R. 1958, S.C.22. The absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; each case must be determined on its own facts keeping in view thecircumstances in which the dying declaration was made; it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; a dying declaration stands on the same footing as another piece of evidence and has tobe judged in

the light of surrounding circumstances and with reference to the principles governing the weighing of evidence. It has been further held that in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accuwsed who had no opportunity of testing the veracity of the statement by cross-examination. But once the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration."

22. In **State of Uttarh Pradesh vs. Ram Sagar Yadav, 1985 (1) S.C.C. 552 the Court** speaking through Chandrachud,C.J. held as under:

"It is well settled that, as a matter of law, a dying declaration can be acted upon without corroboration. See (Khushal Rao Vs. state of Bombay), A.i.R. 1958 S.C.22; Harbans Singh Vs. state of Punjab, A.I.R. 1962 S.C. 439, Gopalsingh Vs. state of M.P. 1972 (3) S.C.C. 268. There is not even a rule of prudence which has hardeneed into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the Court has to be to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing that the Court may, for its assurance, look for corroboration to the

dying declaration.."

23. Having taken survey of the law regarding dying declaration and value which is to be attached to it, now let me turn to the dying declarations which are available on record.

24. The deceased had stated in her first dying declaration dated 14.7.2003 that on 4.7.2003 i.e. on the date of incident at about 3:30 p.m. while cooking in the kitchen on gas stove fire caught to the shore of her saree which she tried to extinguish, and, ultimately, suffered injuries. That her husband, who was in the next room brought a bed sheet and bed cover to extinguish fire. That he had also suffered burn injuries.

25. In the second dying declaration recorded on 16.7.2003, Archana had stated that first dying declaration was given by her under pressure and she went on to say that she having refused to have the sexual intercourse on second occasion her husband (accused) got annoyed and in the hit of anger poured kerosene on her person and set her on fire

using matchstick. That her husband did not try to extinguish fire.

26. With the aforesaid two dying declarations on record, it was expected on the part of the learned Sessions Judge to appreciate both dying declarations and to find out which was reliable. It was open for him to appreciate and to accept either of the dying declarations or to reject both. But it was not open for him not to appreciate any of the dying declarations and exclude and/or omit or to overlook this vital evidence from consideration.

27. The spot panchnama shows that gas cylinder was empty; whereas, the report of the Chemical Analyser shows that residues of kerosene were detected on the clothes which were seized including those of the accused and the deceased. The earth collected from the kitchen had also trecess of the kerosene and that her husband (accused) had also suffered burn injuries.

28. With the above material on record, it was expected on the part of learned Sessions

Judge to take into account above part of evidence to come to the conclusion whether to accept any of the dying declaration or not to accept them. However, in the entire judgment except making reference, while narrating facts, consideration in this behalf is absent. It is, thus, clear that vital evidence has been ignored by the learned Sessions Court and that he failed to appreciate the same.

29. In the above view of the matter, impugned judgment is set aside and the proceedings are remanded back for consideration afresh, leaving all contentions open for being considered afresh in the light of the observations made herein.

(V.C. DAGA,J.)